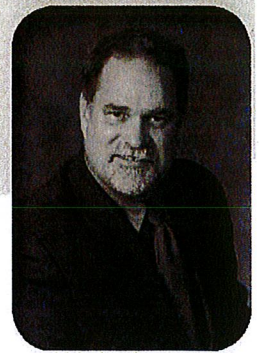


The Casinos are Coming! The Casinos are Coming!

Charting the Regulatory Landscape of Casino Placement in New York

By Michael Rhodes-Devey

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As we are all aware, the Governor and the New York State Legislature passed a complex series of laws which will allow four commercial Vegas style casinos to open in New York State.

Gambling in New York State: History and Background

Generally, the New York State Constitution had prohibited gambling in New York since 1821. However, in 1988 the United States Supreme Court held that Indian tribes could conduct gambling on their own territories if the state in which they were located allowed similar gambling in any form. Thus, in states like New York and California, where charitable Vegas Nights could be held, the tribes could conduct those types of games for profit as opposed to charitable purposes.

And thus the flood gates opened.

In New York, the Oneida Nation was the first to capitalize on this opportunity, entering into a gaming compact with then Gov. Mario Cuomo. The Oneida Nation opened the doors to their first casino in 1993. That casino has expanded exponentially. The Senecas have since opened five casinos; three on their territories in Western New York and an additional two in the cities of Buffalo and Niagara Falls, while the Mohawks opened a casino in 1999 on their territory by the Canadian border.

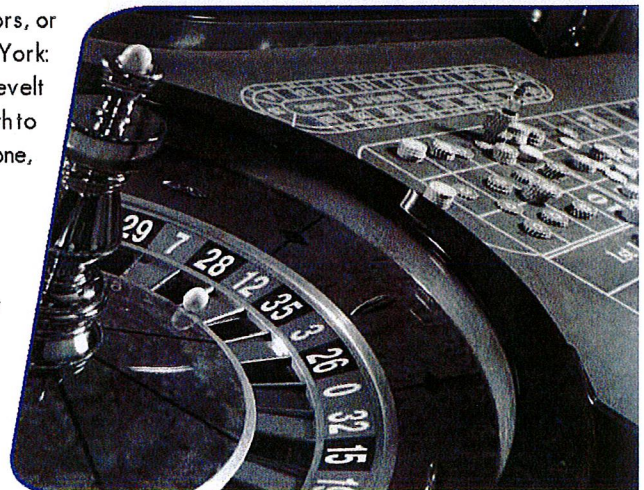
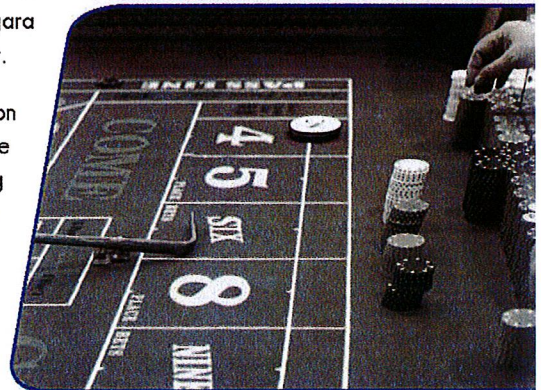
The declining resorts in the Catskills have been advocating for many years for the legalization of Vegas-style gambling to revive their fortunes. In response to pressure for casinos and the economic needs of the harness horse tracks in the state, the New York Legislature, commencing in 2001, passed bills authorizing certain harness horse tracks to operate Video Lottery Terminals (VLTs) to support that industry. This provided a degree of casino-like gaming in New York State and also provided a cash flow to the state government and localities, as well as the equine industry. The exception from the constitutional prohibitions was based upon the theory that the VLTs, which looked and acted like slot machines (prohibited), were not really slot machines, but actually lottery terminals (allowed).

By the time Andrew Cuomo was elected governor, New York had VLT parlors, or "racinos" as they are sometimes called, at eight harness race tracks in New York: Saratoga Harness, Vernon Downs, Monticello Raceway, Tioga Downs, Roosevelt Raceway, Finger Lakes Race Track, Hamburg Gaming and Batavia Downs. The path to the planned racino at Aqueduct Racetrack proved to be a difficult and arduous one, but it eventually opened in 2011 as New York State's latest racino.

The Casino Legislation

After his election in 2010, Governor Cuomo became the first Governor to truly support full-on Vegas-style gaming in New York. Governor Cuomo put his political will and might behind the bills to make full gaming a reality.

In 2012 and 2013, the New York State Legislature passed the necessary legislation to amend the New York State Constitution to allow for the development of



Vegas style casinos in New York. On November 5, 2013, New York voters approved the constitutional amendment to expand casino gambling, authorizing as many as seven full-scale casinos as part of a plan meant to bring jobs to economically distressed upstate regions. The amendment passed with 57 percent of votes: a pretty nice margin for a law that just a few years ago many of us felt was incapable of passage in New York.

The Current Casino Siting Law

The legislation authorizing the development of these new casinos is found in a new provision of the Racing, Pari-Mutuel Wagering and Breeding Law which is entitled "Destination Resort Gaming."

The new law provides for the creation of a Gaming Facility Location Board operating under the auspices of the new New York State Gaming Commission, which was created in 2012 to replace and consolidate the Racing and Wagering Board and the Lottery Commission.

The Racing, Pari-Mutuel Wagering and Breeding Law provides for the creation of four commercial casinos in three areas. The areas excluded are the Metropolitan New York City areas and the Indian Non-Compete Zones. The remaining zones are the Catskill/Hudson Valley Region, the Capital Region and the Eastern Southern Tier Region. Each of the regions are to be approved for at least one casino and, at most, two casinos.

The law creates two zones: Zone One shall include the city of New York and the counties of Nassau, Putnam, Rockland, Suffolk and Westchester. Zone Two shall include all other counties in the state. At this time, there is no provision for the creation of a casino in Zone One. There are no downstate gaming resorts envisioned for at least seven years after the first gaming license is awarded.

The Catskill/Hudson Valley Region shall consist of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster counties.

The Capital Region shall consist of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington counties.

The Eastern Southern Tier Region shall consist of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins, and Wayne (east of State Route 14) counties.

The Oneida, Seneca and Mohawk Indian Nations in New York have reached revenue sharing agreements with New York State in exchange for which they have received geographic zones where the State will not allow the placement of these new, as not yet created, casinos:

Mohawk Non-Compete Zone: Clinton, Essex, Franklin, Hamilton, Jefferson, Saint Lawrence and Warren counties.

Seneca Non-Compete Zone: Allegany, Cattaraugus, Chautauqua, Chemung (west of State Route 14), Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler (west of State Route 14), Steuben, Wayne (west of State Route 14), Wyoming, and Yates counties.

Oneida Non-Compete Zone: Cayuga, Chenango, Cortland, Herkimer, Lewis, Madison, Oneida, Onondaga, Oswego and Otsego counties.

The Gaming Facility Location Board has been appointed and, on March 31, released the Request for Proposals to the public for submission of the casino proposals.

The Gaming Facility Location Board will make their determinations on the casino proposals based upon a statutorily created criteria. However, while there is no home rule provision contained in this law; i.e., the locality does not have the right to reject a casino that is approved by the Gaming Facility Location Board, the Location Board has stated that the host municipalities must pass a resolution supporting the application for there to be consideration of a proposal. Local political support is a must.

The Board will also consider the position of local community, civic, charitable and religious groups, and the like, to determine whether or not there is local support.

Further, local zoning shall not be applied to a proposed casino to prevent its opening.

The Process

The Resort Gaming Facility Location Board has set forth an aggressive schedule for the approval of these casinos:

- March 31, 2014: Request for Applications issued
- April 30, 2014: Mandatory Applicants Conference
- June 30, 2014: Bids due
- June - August 2014: Gaming Facility Location Board reviews, evaluates submissions
- Early Fall 2014: Commission commences licensing review of applicants
- Early Fall 2014: Casino siting and operators formally announced

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The Resort Gaming Facility Location Board will evaluate applications on the following scale and issue a finding on each.

- 70%: Economic activity and business development factors
- 20%: Local impact and siting factors
- 10%: Workforce enhancement factors

Economic Activity and Business Development Factors: How many jobs are you going to create? How much money are you going to spend? How much money will the State and localities get?

This area will also concern itself with: How fast can you open? Will it be a nice facility?

This is 70 percent of the analysis, so if you can ring the bell on this, it takes the developer a long way to the finish line.

The Local Impact and Siting Factors: This is where a locality's impact can most be felt. The State will want a demonstration of local community support as through local laws in support. It will also concern itself with mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility.

Also of concern under this heading would be how the facility will help local, related business, i.e., hotels and restaurants, and how it will not hurt existing local business.

Workforce Enhancement Factors: These factors will be a number of disparate issues such as the implementation of a workforce development plan that utilizes the existing labor force, including training programs that serve the unemployed; affirmative action program; utilizing the existing labor force; agreements with organized labor;

The Board will also consider measures adopted to address problem gambling, including utilizing sustainable development principles and purchasing, whenever possible, domestically manufactured slot machines for installation in the gaming facility.

Revenue-Sharing

The proposed revenue distribution scheme aims to give something to everyone. The big winners will be the host communities. Next, the neighboring municipalities within the gaming region will each get something and finally, municipalities within the Indian Non-Compete areas will also receive distributions. All schools in the state will benefit. The losers: The Metropolitan New York City region, which, for now, will not participate in municipality revenue sharing.

The current statutory scheme envisions that the State will distribute 80% of the net gaming revenues retained by the State for education aid above the amounts distributed under the state education formula.

The host municipalities which will each receive 10 percent. The counties within the respective region where the casino is hosted will also receive 10 percent.

Under the Act, for the first time, every county in an Indian exclusivity zone will share in Indian gaming facility revenues. Ten percent of the net gaming revenue retained by the State from Native American gaming facilities will be distributed to the counties in each respective exclusivity zone, and existing tribal payments to their local municipalities will be preserved.

What Should Municipalities Be Doing Now?

The big issue right now for municipalities in the Catskill/Hudson Valley, Capital and Eastern Southern Tier Regions is to stay apprised of what is going on within your region. Be aware of the casino proposals being submitted. Support or opposition to a casino proposal by a municipality is probably best expressed from a political and public relations stand point. If you want the proposal to be successful, show your support early and often, both in public and press pronouncements.

Are there infrastructure issues which the municipality feels should be addressed by a casino developer? Make those needs and desires known early to the developer, preferably well before they submit their proposal to the Location Board. Make sure the Location Board is aware of your concerns and needs so they can utilize this in their evaluation of the proposal.

Do not let the events sweep past you. Step in and make your needs known.

As stated earlier, the enabling statutes sweep aside local zoning and planning issues. Technically, if a proposal goes through and gets accepted without local input, once it is approved it may be too late for your county's voice to be heard. ■

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